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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,180

05/05/2005

Bruno Herren

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EXAMINER

FRANCIS, FAYE

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

06/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,180

Applicant(s)

HERREN, BRUNO

Examiner

Faye Francis

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3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12, 14-16 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22 and 27-32 is/are allowed.
- 6) ☒ Claim(s) 11-12, 14-16 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11-12 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Treiss Jr [2,484,391], hereinafter Treiss.

Treiss discloses in Fig 1, a hand-operated crusher for cutting up ice, comprising a housing having an upper part [cap 10] and a lower part [container 11], a vertical rod [shaft 23], a spring 28, means of an actuating mechanism having a push button [knob 26] and a knife [blade 25] wherein the cutter at is lowermost position, does not contact the base of the housing lower part [Fig 1].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

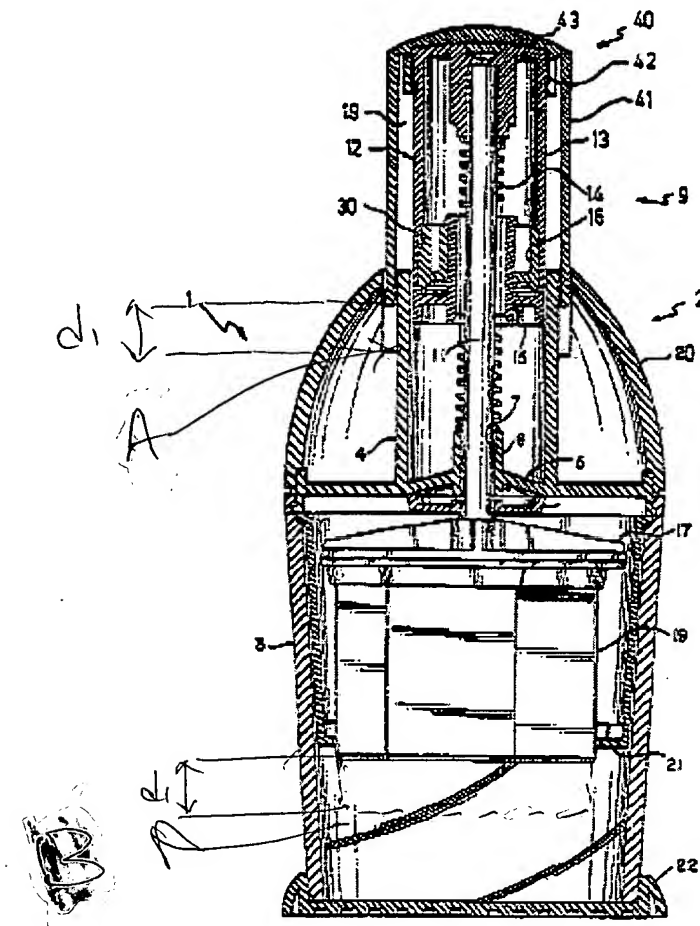
4. Claims 11-12 are 14-16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Michel [US 2001/0028007].

Michel discloses in Fig 1 (also see Figure below wherein the letters A-B and d1 have been added by the examiner), a hand-operated crusher which is capable of cutting

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up ice, comprising a housing 1 having an upper part 2 and a lower part 3, a vertical rod [plunger 11], a spring 14, means of an actuating mechanism having a push button 12 and a knife 19 wherein the cutter at its lowermost position, does not contact the base of the housing lower part [as clearly shown in Fig 1, the actuating mechanism can only be lowered a distance d_1 to point A, therefor moving the blade downward to point B and leaving a gap between the blade and the base of the housing].

Any remaining limitations not disclosed in the reference would then have been obvious design choice, as they solve no stated problem and of no patentable merit. [see pages 3 and 4 of the specification].



5. Claims 14-16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Treiss.

The limitations of these claims would have been obvious design choice once the basic structure was known, as it solves no stated problem and of no patentable merit [see pages 3 and 4 of the specification].

6. Claims 23-26 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Treiss in view of Engelke [4,417,512].

Treiss discloses most of the elements of these claims but for the specific underlay.

Engelke teaches the concept of providing a crusher with an anti-slip elastomer pad 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base in the device of Treiss with the anti-slip elastomer pad as taught by Engelke in order to maximize safety during operation.

Any remaining limitations not disclosed in the reference would then have been obvious design choice, as they solve no stated problem and of no patentable merit. For example, note the cited reference to Antonini, which discloses a pad/shock absorber made out of elastomer silicone.

7. Claims 23-26 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Michel. in view of Engelke [4,417,512].

Michel. discloses most of the elements of these claims but for the specific underlay.

Engelke teaches the concept of providing a crusher with an anti-slip elastomer pad 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base in the device of Michel. with the anti-slip elastomer pad as taught by Engelke in order to maximize safety during operation.

Any remaining limitations not disclosed in the reference would then have been obvious design choice, as they solve no stated problem and of no patentable merit. For example, note the cited reference to Antonini, which discloses a pad/shock absorber made out of elastomer silicone.

Allowable Subject Matter

8. Claims 20-22 and 2^{EF}~~8~~-32 are allowed.

Response to Arguments

9. Applicant's arguments filed 5/22/07 have been fully considered but they are not persuasive.

In response to applicant's argument on page 7 that applicant has been unable to find any teaching in Treiss of a cutter that does not contact the base of container 11 when at its lowermost position, and is unable to discern any mechanism in the ice crusher of Treiss that would prevent blades 25 from touching the base of container 11 when actuated by handle 26. This argument is not understood since the Treiss reference clearly discloses a plug/stopper 24 that disposed the blade about 1/2" above the bottom of the glass at its lowermost position as clearly shown in Fig 1 [shaft 23 moves upward from the opening 15]. With respect the toothed blade, this limitation is

well known the comminuting art. Surely the applicant is not suggesting that he is the first to recognize a toothed blade.

In response to applicant's argument on page 8, please note the rejection above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Faye Francis/
Primary Examiner
Art Unit 3725

FF